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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ENTROPIC COMMUNICATIONS, LLC,

Case No. 2:23-cv-01043-JWH-KES
(Lead Case)

Plaintiff,

Case No. 2:23-cv-01048-JWH-KES
(Related Case)

DISH NETWORK CORPORATION, *et al.*

[Assigned to the Honorable John W. Holcomb]

Defendants.

ENTROPIC'S OPPOSITION TO COMCAST'S MOTION TO DISMISS THE CORRECTED SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

ENTROPIC COMMUNICATIONS, LLC

Date: April 25, 2025

Plaintiff,

Time: 9:00 am

V.

COX COMMUNICATIONS, INC., *et al.*

REDACTED VENUE

Defendants

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

ENTROPIC COMMUNICATIONS.

ENTROPIC'S OPPOSITION TO COMCAST'S MOTION TO DISMISS THE
CORRECTED SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

LLC,

Plaintiff,

V.

COMCAST CORPORATION, *et al.*,

Defendants.

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff,

V.

DIRECTV, LLC, *et al.*

Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

There is no jurisdictional defect in this case and thus no basis to grant Comcast’s motion under Federal Rule of Civil Procedure 12(b)(1). Comcast’s motion presents a garden-variety license defense that—like similar defenses in many cases before—goes to the merits of Entropic’s claims, not the Court’s jurisdiction.

Comcast’s motion is based on a claim that the VSA authorizes it to practice the patents-in-suit absent willful infringement. But the absence of “authority” to practice a patent is, by statute, a substantive element of a claim for patent infringement, not a jurisdictional prerequisite. Standing in no way depends on the merits of a right to relief, and the Corrected Second Amended and Supplemental Complaint (“SAC”) irrefutably demonstrates all elements of Article III standing. It is also premature to evaluate the VSA—mentioned for the first time in an affirmative defense in Comcast’s motion—because Rule 12(b) tests the sufficiency of the complaint and nothing more.

Comcast’s motion simply assumes that the current complaint is jurisdictionally defective because the Court previously dismissed a separate complaint on that ground. But Comcast’s presumption ignores this Court’s ongoing obligation to assess its jurisdiction. Because Comcast’s position contradicts fundamental precepts of constitutional jurisprudence and civil procedure, this Court should reach a different result with respect to the SAC and deny Comcast’s motion.

As for Comcast’s motion to dismiss Entropic’s claims for willful infringement under Rule 12(b)(6), the SAC adds more than enough detailed, factual allegations to pass the plausibility test. Specifically, the SAC alleges that then-patent owner Entropic Inc. sent an email to the MoCA Board—including Comcast—informing them that the ’518 Patent is essential to the MoCA standard, a standard Comcast was intimately involved in developing and promoting, and that Comcast has used the

1 MoCA standard since that time despite knowing that the '518 Patent is essential to
2 practicing it. 1043 DE 588-1 (SAC) ¶¶ 133–36. At a minimum, these allegations
3 establish that Comcast was willfully blind and knew of a high risk that it was
4 infringing the '518 Patent, as well as the '759 Patent (a continuation of the '518
5 Patent). *Id.* ¶¶ 137–38. These new allegations, plus the existing allegations
6 concerning Comcast's long-standing and deep involvement with MoCA and the
7 Asserted Patents' prior owners, are sufficient to allege that Comcast was aware of
8 and knew of its infringement of the Asserted Patents.

9 There is also another straight-forward and independent reason to deny
10 Comcast's motion regarding willfulness: as the SAC amply alleges, Comcast has
11 been on notice of its infringement of the Asserted Patents through detailed claim
12 charts and infringement contentions Entropic sent it after the original complaint was
13 filed. *Id.* ¶¶ 158–81. Comcast's position—that this notice is null simply because it
14 occurred during a lawsuit—is untenable. Although some district courts ignore post-
15 suit willfulness, the majority view it for what it plainly is: a defendant's knowing
16 persistence at infringing another's patent rights. This Court should join that majority
17 view and deny Comcast's motion.

18 In sum, Entropic's allegations of non-willful patent infringement contain no
19 jurisdictional defect, and the SAC's new, pre-suit allegations of willfulness, as well
20 as its post-suit allegations of the same, clear the plausibility hurdle for willful patent
21 infringement as to all Asserted Patents. Comcast's motion, under both 12(b)(1) and
22 12(b)(6), should be denied in full.

23 **II. JUDICIAL STANDARD**

24 **A. Rule 12(b)(1) of the Federal Rules of Civil Procedure**

25 Subject matter jurisdiction challenges arise under Rule 12(b)(1). Jurisdiction
26 is a question of whether the Court has the *authority* to hear a claim. In contrast to
27 Rule 12(b)(6), the *merits* of a claim are irrelevant to the question of *authority*—the

Court either has authority, or lacks it, on the basis of the claim itself, not on its eventual outcome. “Jurisdiction, therefore, is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover.” *Bell v. Hood*, 327 U.S. 678, 682 (1946). “[I]t is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction.” *Id.* Thus, “[a]t the pleading stage, a plaintiff need only allege sufficient facts that, taken as true, demonstrate each element of Article III standing.” *Cedar Park Assembly of God of Kirkland, Washington v. Kreidler*, 2025 WL 716341, at *4 (9th Cir. Mar. 6, 2025) (quotations omitted). And in the constitutional standing context, “a plaintiff need not satisfy the *Iqbal/Twombly* plausibility standard,” *Mirabelli v. Olson*, 2025 WL 42507, at *4 (S.D. Cal. Jan. 7, 2025), because “the threshold question of whether plaintiff has standing (and the court has jurisdiction) is distinct from the merits of his claim.” *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011).

15 B. Rule 12(b)(6) of the Federal Rules of Civil Procedure

Dismissal pursuant to Rule 12(b)(6) is based on a determination that the claim as pled is implausible. The barrier to dismissing a claim at this stage, with no discovery, is correspondingly very high. At the pleading stage, a court must “accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1029–30 (9th Cir. 2009) (citation and quotation omitted). A complaint need only “contain[] ‘sufficient factual matter, accepted as true, to state a claim of relief that is plausible on its face.’” *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Thus, “[i]f there are two alternative explanations, one advanced by [a] defendant and the other advanced by [a] plaintiff, both of which are plausible, [a] plaintiff’s complaint

1 survives a motion to dismiss under Rule 12(b)(6).” *Starr v. Baca*, 652 F.3d 1202,
2 1216 (9th Cir. 2011).

3 **III. ARGUMENT**

4 **A. Comcast’s motion under Rule 12(b)(1) should be denied in full.**

5 This Court previously ruled that the VSA divested it of Article III jurisdiction
6 over the First Amended Complaint’s (“FAC”) claims of non-willful patent
7 infringement but that it retained jurisdiction over claims of willful patent
8 infringement. *See* 1048 DE 132 at 7. Entropic respectfully submits that this
9 conclusion misapplied the law of subject matter jurisdiction and should therefore be
10 revisited.

11 To Entropic’s knowledge, no Federal Circuit case has held that a license or
12 covenant not to sue deprives a court of subject matter jurisdiction over a subsequent
13 patent infringement action. To the contrary, recent Federal Circuit precedent
14 establishes that Article III standing to sue for patent infringement is distinct from the
15 statutory requirements of the Patent Act. *See Intell. Tech LLC v. Zebra Techs. Corp.*,
16 101 F.4th 807, 814 (Fed. Cir. 2024). And the Patent Act specifically requires, as one
17 statutory element of a claim for patent infringement, that the defendant act “without
18 authority.” 35 U.S.C. § 271. The question of whether Comcast was authorized to use
19 Entropic’s patents is thus, by statute, an element of Entropic’s claim for infringement.
20 It cannot be, and is not, a jurisdictional requirement.

21 Consistent with this, the Federal Circuit has clarified that, to establish subject-
22 matter jurisdiction, a patent owner need only allege that it possessed at least one
23 exclusionary right in its patent when its claim was filed. *Zebra Techs. Corp.*, 101
24 F.4th at 814. Here, Entropic “alleged that it possesses [exclusionary rights in the
25 asserted patents]” and “also alleged that [the Comcast defendants] infringe its
26 exclusionary rights,” *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925
27 F.3d 1225, 1234 (Fed. Cir. 2019); *see, e.g.*, SAC ¶¶ 242, 255, 270 (allegations

1 pertaining to '518 Patent). "This is enough to confer standing at the pleading stage."
2 *Lone Star*, 925 F.3d at 1234.

3 This outcome is consistent with established Federal Circuit precedent that
4 treats "[a] license [as] an affirmative defense to patent infringement[]" that must be
5 pleaded and proven by the accused infringer. *Scramoge Tech. Ltd. v. Apple, Inc.*, 669
6 F. Supp. 3d 826, 830 (N.D. Cal. 2023) (citing *Carborundum Co. v. Molten Metal*
7 *Equip. Innovations, Inc.*, 72 F.3d 872, 878 (Fed. Cir. 1995)). As an affirmative
8 defense, a licensing defense may be waived if not pled in a timely fashion. *See, e.g.*,
9 *Zest IP Holdings, LLC v. Implant Direct Mfg. LLC*, 2015 WL 1510755, at *19 (S.D.
10 Cal. Feb. 3, 2015). By contrast, a lack of subject matter jurisdiction cannot be waived.
11 *See* FED. R. CIV. P. 12(h)(3). The fact that a licensing defense can be waived
12 demonstrates that the existence of a license goes to the merits of liability, not to
13 jurisdiction.

14 The authority cited by Comcast is inapposite: it addresses jurisdiction to bring
15 a **declaratory judgment** action by entities who have no rights in a patent, not
16 infringement actions by patent owners. To invoke declaratory judgment jurisdiction,
17 a plaintiff must show "a substantial controversy[] between the parties having adverse
18 legal interests, of sufficient immediacy and reality to warrant the issuance of a
19 declaratory judgment." *Dow Jones & Co. v. Ablaise Ltd.*, 606 F.3d 1338, 1345 (Fed.
20 Cir. 2010) (quotations omitted). For example, *Revolution Eyewear, Inc. v. Aspex*
21 *Eyewear, Inc.*, addressed jurisdiction over declaratory judgment counterclaims after
22 a patentee voluntarily dismissed its claims and provided a covenant not to sue. 556
23 F.3d 1294, 1297 (Fed. Cir. 2009); *see* 1043 DE 595 at 12 (quoting *Revolution*
24 *Eyewear*). In the declaratory judgment context, the scope of a covenant or license **can**
25 be a jurisdictional issue. If a license exists, there is no longer a controversy of
26 "sufficient immediacy and reality" and thus no declaratory judgment jurisdiction. *See*
27 *also King Pharms., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1283 (Fed. Cir. 2010)

1 (vacating order on declaratory judgment counterclaims of invalidity because the
2 “covenants not to sue confirm that there is no case or controversy”); *cf. Apple Inc. v.*
3 *Qualcomm Inc.*, 992 F.3d 1378, 1381 (Fed. Cir. 2021) (appellant could not challenge
4 patent through appeal of IPR decisions after receiving covenant not to sue). In an
5 infringement action, by contrast, standing turns on whether a plaintiff holds
6 “exclusionary rights” in a patent. *Lone Star*, 925 F.3d at 1234. There is no need, in
7 this context, to analyze whether a claim is of “sufficient immediacy and reality”
8 because a patentee’s well-plead allegations that its patents are infringed suffices to
9 invoke the court’s jurisdiction. *See Zebra Techs.*, 101 F.4th at 814.

10 Comcast argues that the Court’s dismissal of the FAC “remains the law of the
11 case.” 1043 DE 595 at 13. This is incorrect: “[t]he doctrine of ‘law of the case’ does
12 not apply to the fundamental question of subject matter jurisdiction.” *Gonzalez v.*
13 *United States Immigr. & Customs Enf’t*, 975 F.3d 788, 805 n.10 (9th Cir. 2020).
14 “[W]hen it comes to non-discretionary actions for damages, . . . federal courts possess
15 a virtually unflagging obligation . . . to exercise the jurisdiction given them.” *R.R. St.*
16 *& Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 977 (9th Cir. 2011) (quotation omitted).
17 Thus, the prior dismissal of the FAC is not “law of the case” regarding this Court’s
18 jurisdiction over the SAC.¹

19

20

21 ¹ Although the dismissal of the FAC was based in part on a lack of constitutional
22 standing, constitutional standing has never been adequately briefed by the parties.
23 The first time Comcast raised constitutional standing in a brief was in its response to
24 Entropic’s supplemental brief. *See* 1048 DE 129 at 1; 1048 DE 126 at 1 (“Standing
25 has not been disputed in this case.”). But even then, in the resulting order, this Court
26 gave no explicit indication that constitutional standing was the basis for its decision.
27 *See* 1043 DE 132 at 6–7. Consequently, Entropic did not focus on constitutional
standing in its motion for reconsideration, *see generally* 1043 DE 186; 1043 DE 221;
and at most, in Comcast’s opposition to reconsideration, Comcast raised
constitutional standing only twice, both times in a conclusory, passing form, and
without any supporting argument or caselaw. *See* 1043 DE 202 at 9, 14.

At bottom, Comcast is improperly twisting its affirmative licensing defense into a jurisdictional attack to subvert the rules on considering matters outside the pleadings on a Rule 12 motion. The simple fact that Entropic has standing to bring an infringement suit does not, as Comcast suggests, “deprive [the VSA] of any force.” *See* 1043 DE 595 at 15; 1043 DE 275 at 6. Rather, the scope and enforceability of the VSA are issues for later adjudication on the merits. Under Federal Circuit precedent on Article III standing in patent infringement actions, the Court should deny Comcast’s motion under Rule 12(b)(1) in its entirety.

In the event this Court disagrees and finds it does not have jurisdiction, two precedential rules are worth noting. First, if this Court “concludes that it lacks subject-matter jurisdiction, [it] must dismiss the complaint in its entirety.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Second, if the SAC is dismissed for lack of subject matter jurisdiction, that dismissal must be without prejudice, because in that event, the merits of Entropic’s claims could not have been considered. *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017). In other words, if the Court finds Entropic lacks standing, it cannot issue a final judgment nor adjudicate the sufficiency of Entropic’s willfulness allegations.

B. The SAC sufficiently alleges that Comcast willfully infringed each of the Asserted Patents.

1. The allegations regarding Comcast’s post-suit conduct are sufficient to plead Comcast’s willful infringement.

Comcast does not contest that the SAC sufficiently alleges that Comcast had post-suit knowledge of the Asserted Patents and had specific, detailed knowledge that it was infringing (and continues to infringe) those patents. Nor could it—Entropic’s prior complaints provided detailed notice of the Asserted Patents and Comcast’s infringement, including attached claim charts. SAC ¶¶ 161–70; *see generally* 1048 DE 1, 67. Even if that were insufficient, Entropic has served

1 substantial and detailed infringement contentions for each Asserted Patent that
2 further provided notice of Comcast's infringement of the Asserted Patents. *Id.*
3 ¶¶ 171–77. Rather than contest the sufficiency of these allegations, Comcast instead
4 asserts that: (1) the VSA prohibited the original Complaint in this case, so it cannot
5 serve to provide Comcast with notice of its willful infringement; and (2) the Court
6 should adopt the minority position as to post-suit willful infringement and find that
7 it is categorically insufficient. 1043 DE 598 at 14:17–18:24. Both arguments lack
8 merit.

9 *First*, the VSA, as a factual matter, has no bearing on Comcast's corporate
10 scienter, and as a legal matter, does not relieve Comcast of liability for willful
11 infringement. Comcast indisputably received the original Complaint and
12 accompanying claim charts and reviewed those materials. *See* 1048 DE 1, 19–21,
13 67. It also undisputedly received, separately, detailed infringement contentions
14 Entropic served on it. SAC ¶¶ 171–72. Comcast does not contest that if Entropic had
15 sent the Complaints and contentions to Comcast without filing a lawsuit, that would
16 have been sufficient to support willfulness allegations. Instead, Comcast argues that
17 the fact that it received them during a lawsuit somehow nullifies its knowledge of its
18 infringement and forever protects Comcast from willful infringement. But even if
19 the filing of Entropic's lawsuit somehow constitutes breach, as Comcast alleges,² it
20 does not eliminate Comcast's specific knowledge of both the Asserted Patents and
21 Comcast's infringement thereof. *See Collins & Aikman Prod. Co. v. Sermatech
Eng'g Grp., Inc.*, 746 N.Y.S.2d 698, 700 (2002) ("[C]ovenants not to sue, when
22 considered purely defensively, are narrowly construed because they have the effect
23 of exculpating a party from its own wrongdoing.").

25
26 ² Comcast's assertion that the original Complaint breached the covenant is without
27 merit. All prior complaints have alleged willful patent infringement of all Asserted
Patents, *see* 1048 DE 1; 1050 DE 1; and it has never been suggested that Entropic
lacked a good faith basis to bring those claims.

1 It is also not the case that allowing Entropic to litigate this suit “would deprive
2 [the] covenant[] not to sue of any force” or would “forc[e] the parties to litigate when
3 that is the very thing that they agreed not to do.” 1043 DE 598 at 15:12–15 (citing
4 1043 DE 275 at *4). The covenant may still operate to limit Comcast’s damages
5 window to the time during which its infringement was willful. And the parties never
6 agreed to forbear litigation altogether. Simply put, the VSA expressly allows
7 Comcast to be sued for willful infringement and therefore is not a license.³

8 In short, Comcast indisputably has had detailed knowledge of the Asserted
9 Patents and how it is infringing the Asserted Patents on an ongoing basis since at
10 least the filing of the original Complaint and subsequent service of infringement
11 contentions (each of which independently provided notice). SAC ¶¶ 158–75. Despite
12 this, Comcast has continued to infringe the Asserted Patents. *Id.* ¶¶ 176–77. This is
13 paradigmatic willful patent infringement, and is expressly carved out in the VSA,
14 which is agnostic as to the method by which Comcast obtains its knowledge and
15 begins to willfully infringe. 1048 DE 82-2 (“VSA”) § 7.3.

16 **Second**, Comcast’s argument that this Court should categorically reject post-
17 suit willfulness allegations relies on non-precedential caselaw that represents a
18 **minority** viewpoint. This Court should instead adopt the **majority** viewpoint and join
19 “most [district] courts in holding that [post-filing, willful infringement allegations in
20 an amended complaint] *may* support a claim for willful infringement.” *Merrill Mfg.*
21 *Co. v. Simmons Mfg. Co.*, 553 F. Supp. 3d 1297, 1306 (N.D. Ga. 2021); *see id.* at
22 1305–06 & n.9 (collecting cases); *BillJCo, LLC v. Apple Inc.*, 583 F. Supp. 3d 769,
23 778–79 & n.2 (W.D. Tex. 2022) (collecting cases); *Therabody, Inc. v. Tzumi Elecs.*

24 _____
25 ³ The very concept of a license for non-willful infringement is nonsensical. In
26 Comcast’s estimation, it has a license and authorization to use patents but it cannot
27 be aware that it is using said patents. And once it becomes aware it is using the patents
for which it supposedly has a license, the license ceases to exist. That is antithetical
to the definition of a license

1 *LLC*, 2022 WL 17826642, at *9–12 (S.D.N.Y. Dec. 19, 2022) (analyzing court split);
2 *Tonal Sys., Inc. v. iFIT Inc.*, 2022 WL 951549, at *2–3 (D. Del. Mar. 30, 2022)
3 (evaluating counterpoints).⁴ The viewpoint that original complaints may supply the
4 knowledge necessary for post-suit willful infringement is also one held by a majority
5 of district courts in this circuit. *See, e.g., Apple Inc. v. Samsung Elecs. Co.*, 258 F.
6 Supp. 3d 1013, 1027 (N.D. Cal. 2017) (“[P]ost-filing conduct alone can serve as the
7 basis of a jury’s willfulness finding”); *Monolithic Power Sys., Inc. v. Silergy*
8 *Corp.*, 127 F. Supp. 3d 1071, 1076 (N.D. Cal. 2015) (“[A] plaintiff can state a claim
9 for post-filing willful infringement so long as the plaintiff alleges, in an amended
10 complaint and with sufficient particularity, that there is an objectively high risk the
11 defendant is continuing to infringe and the defendant knows or should know of that
12 objectively high risk.”); *MyMedicalRecords, Inc. v. Jardogs, LLC*, 1 F. Supp. 3d
13 1020, 1026 (C.D. Cal. 2014) (“A defendant should not be able to escape liability for
14 postfiling infringement when the complaint manifestly places the defendant on
15 notice that it allegedly infringes the patents-in-suit.”).⁵ And, although no Circuit
16 Court has directly addressed this issue in the context of willful infringement, the idea
17 that “service of an earlier complaint can provide the requisite knowledge of [an]
18

19 ⁴ *See, e.g., Focus Prods. Grp. Int’l, LLC v. Kartri Sales Co.*, 647 F. Supp. 3d 145,
20 262 (S.D.N.Y. 2022) (“A defendant’s continued sales of infringing products after a
21 complaint has been filed against it can also, on its own, warrant a finding of
22 willfulness.”); *Biedermann Techs. GmbH & Co. KG v. K2M, Inc.*, 528 F. Supp. 3d
23 407, 430 (E.D. Va. 2021) (“[T]he filing of the case itself . . . put K2M on notice of
24 the infringement.”).

25 ⁵ *See also, e.g., RJ Tech., LLC v. Apple, Inc.*, 2023 WL 3432237, at *8 (C.D. Cal.
26 Mar. 23, 2023); *Parity Networks, LLC v. Moxa Inc.*, 2020 WL 6064636, at *4–5 (C.D.
27 Cal. Sept. 11, 2020); *Fluidigm Corp. v. IONpath, Inc.*, 2020 WL 1433178, at *3 (N.D.
28 Cal. Mar. 24, 2020); *Vaporstream, Inc. v. Snap Inc.*, 2020 WL 136591, at *20 (C.D.
Cal. Jan. 13, 2020); *Finjan, Inc. v. Eset, LLC*, 2017 WL 1063475, at *4 (S.D. Cal.
March 21, 2017); *TeleSign Corp. v. Twilio, Inc.*, 2015 WL 12765482, at *10 (C.D.
Cal. Oct. 16, 2015).

1 asserted patent in an amended complaint” is “well-established in the context of
2 induced infringement” *Therabody*, 2022 WL 17826642, at *10 (citing *In re Bill*
3 *of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1345 (Fed.
4 Cir. 2012); *Labyrinth Optical Technologies, LLC v. Fujitsu America, Inc.*, 2013 WL
5 12126111, at *4-6 (C.D. Cal. Aug. 21, 2013)).

6 Despite the fact that the majority of courts recognize post-suit willful conduct,
7 Comcast hyperbolically asserts that recognizing post-suit willful conduct in general
8 “would have the absurd result of transforming every infringement claim into one of
9 willful infringement unless the defendant immediately ceased all accused conduct .
10” 1043 DE 598 at 16. First, Rules 8 and 11 guard against speculative and baseless
11 allegations of willfulness; second, whether plaintiffs may *prospectively* include post-
12 suit allegations in their original complaints is not at issue here, *see, e.g., Ravgen, Inc.*
13 *v. Quest Diagnostics Inc.*, 2022 WL 2047613, at *3 (C.D. Cal. Jan. 18, 2022); and
14 third, to the extent any plaintiff attempts gamesmanship at the pleading stage, courts
15 are equipped to police discreditable motions to amend to add willfulness allegations
16 to subsequent complaints, *see, e.g., Slot Speaker Techs., Inc. v. Apple, Inc.*, 2017 WL
17 4354999, at *2 (N.D. Cal. Sept. 29, 2017). It is well-established that “post-filing
18 conduct alone can serve as the basis of a jury’s willfulness finding”, *Apple Inc.*
19 *v. Samsung Elecs. Co.*, 258 F. Supp. 3d 1013, 1027 (N.D. Cal. 2017), and thus it is
20 not “absurd” to acknowledge that all defendants face a post-suit choice: cease willful
21 infringement, bargain for a license, or risk liability by standing pat on their defenses.

22 Comcast’s position would hand defendants a free pass to continue
23 infringing—regardless of how egregious the defendant’s post-filing behavior is—
24 despite being put on notice of its infringement by a complaint. This result is contrary
25 to the Supreme Court’s holding that “Section 284 allows district courts to punish the
26 **full range** of culpable behavior.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93,
27 106 (2016) (emphasis added); *see also MyMedicalRecords, Inc.*, 1 F. Supp. 3d 1020,

1 1026 (C.D. Cal. 2014) (“[I]f a plaintiff . . . is able to establish the defendant’s
2 knowledge of the alleged infringement based on a prior, though superseded,
3 complaint, the defendant should not be able to escape liability for conduct occurring
4 after the plaintiff files its complaint.”).

5 Comcast’s arguments, and the cases quoted by Comcast in support, are rooted
6 in a fundamental error conflating the pleading standard for willful infringement and
7 the merits standard for willfulness-based enhanced damages under Section 284.
8 They are not the same thing. To plead willful patent infringement, a patentee need
9 only prove knowledge of the patent and knowledge of infringement. *Sonos, Inc. v.*
10 *Google LLC*, 591 F. Supp. 3d 638, 643 (N.D. Cal. 2022). To succeed on the merits
11 in establishing entitlement to enhanced damages under Section 284, however, the
12 patentee must show proof of “egregious cases of culpable behavior” that has “been
13 variously described in [Federal Circuit] cases as willful, wanton, malicious, bad-
14 faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a
15 pirate.” *Halo*, 579 U.S. at 103–04. “Although willfulness is a component of
16 enhancement, an award of enhanced damages does not necessarily flow from a
17 willfulness finding.” *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 14 F.4th 1323, 1330 (Fed. Cir.
18 2021) (quotation omitted). In other words, willful patent infringement is “a necessary
19 but not necessarily sufficient predicate, for a finding of egregious misconduct and
20 enhanced damages.” *Sonos, Inc. v. Google LLC*, 591 F. Supp. 3d 638, 643 (N.D. Cal.
21 2022) (citing *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d 1295, 1310 (Fed. Cir. 2019)).
22 For instance, a willful infringer who maintains a good-faith belief that the patent is
23 invalid may not be liable for enhanced damages. See *Sunoco Partners Mktg. &*
24 *Terminals L.P. v. U.S. Venture, Inc.*, 32 F.4th 1161, 1177 (Fed. Cir. 2022) (listing
25 factors to consider). At the pleading stage, “once willfulness is adequately pled, the
26 complaint need not go further and specify the further aggravating circumstances
27 warranting enhanced damages.” *Sonos*, 591 F. Supp. at 644.

1 Understanding this distinction lays bare the irrelevance of Comcast’s assertion
2 that a patentee would “always [be able] to file an amended complaint to assert
3 willfulness based on knowledge gleaned from the allegations in the earlier
4 complaint.” 1043 DE 598 at 17:7–9. A defendant with a good faith belief in its
5 defenses has nothing to fear from willful infringement because, per *Halo*, it cannot
6 be subject to enhanced damages under Section 284. But a defendant who reviews a
7 complaint, determines a high risk that it is infringing the asserted patent, and lacks
8 any good faith defenses to infringement such that its conduct is egregious under
9 *Halo*, ***and yet continues to infringe***, rightfully should be held accountable.
10 Comcast’s view is that—even if a judge determines after trial that a defendant’s
11 conduct was egregious—such a defendant nonetheless should escape consequences
12 for its egregious conduct merely because its notice comes via a complaint. That result
13 is contrary to policy and the plain language of Section 284.

In sum, the Court should reject Comcast’s arguments that seek to nullify Entropic’s well-pled factual allegations that Comcast obtained knowledge of both the Asserted Patents and its specific infringement of those patents through the Complaints and infringement contentions in this case, and yet has continued to infringe, constituting willful patent infringement no later than when Comcast obtained such knowledge. This Court should adopt the majority view regarding post-suit willful patent infringement, deny Comcast’s motion under Rule 12(b)(6), and permit the case to proceed to discovery.

2. The allegations related to Comcast's investment in Entropic Inc. and participation in MoCA are sufficient to plead Comcast's willful infringement.

25 Comcast argues that Entropic's allegations about Comcast's investment in
26 Entropic Inc. and Comcast's involvement in MoCA are insufficient to establish that
27 Comcast had knowledge of the filing of the Asserted Patents. 1043 DE 598 at 21:13–

1 23:7. As an initial matter, Comcast’s suggestion that these allegations are not specific
2 or narrow enough flies in the face of the well-settled standard for pleading
3 willfulness. Courts have repeatedly recognized that at the early pleading stage, a
4 party cannot possibly know the full extent of a party’s willful infringement,⁶ because
5 that information often is within the sole possession of the infringer. *See Sonos, Inc.*,
6 591 F. Supp. 3d at 644–45 (“The full extent of egregious behavior is . . . unknown at
7 the pleading stage. It would be unreasonable to expect patent plaintiffs to be in a
8 position to plead the full extent of egregious misconduct.”).

9 To demand that a party identify with immense specificity the particulars of
10 when, where, and how the defendant became aware of its infringement without **any**
11 **discovery**—precisely what Comcast urges here—would convert the pleading stage
12 into summary judgment. Worse, it would offer willful infringers ample opportunity
13 to avoid discovery merely through successfully hiding enough of its conduct, which
14 is precisely what Comcast is doing now in refusing to produce any documents on its
15 own VSA defense or willfulness. *See, e.g.*, 1043 DE 174 (SM hearing on discovery
16 disputes). This is not what the law requires. Instead, the law applies a lenient
17 pleading standard for willful infringement that merely requires plausible allegations
18 of the defendant’s knowledge of the asserted patents and its infringement of those
19 patents. *Arctic Cat Inc. v. Bombardier Recreational Prods., Inc.*, 876 F.3d 1350,
20 1371 (Fed. Cir. 2017); *see, e.g.*, *Warn Indus., Inc. v. Agency 6 Inc.*, 660 F. Supp. 3d
21 924, 935 (E.D. Cal. 2023) (finding plaintiff sufficiently pled willful infringement by
22 alleging that defendant was aware of the pre-publication grant of asserted patent and
23 received cease and desist letter from plaintiff). This is exactly what Entropic has
24 alleged.

25 _____
26 ⁶ Yet another reason the VSA, as an affirmative defense, is not a bar to suit. *See Air*
27 *Prod. & Chemicals, Inc. v. Reichhold Chemicals, Inc.*, 755 F.2d 1559, 1563–64 (Fed.
28 Cir. 1985) (a contract defense does not defeat federal subject matter jurisdiction);
Pixton v. B & B Plastics, Inc., 291 F.3d 1324, 1327 (Fed. Cir. 2002) (same).

1 Similarly, Comcast incorrectly suggests that the FAC allegations the Court
2 previously found insufficient on their own must now be disregarded for all time. To
3 the contrary, the Federal Circuit has “stated many times that a number of factors
4 enter into a willfulness determination and, as such, the issue is properly resolved by
5 evaluating the totality of the surrounding circumstances.” *Graco, Inc. v. Binks Mfg.*
6 Co., 60 F.3d 785, 792 (Fed. Cir. 1995). Thus, the fact that certain prior allegations
7 may have been insufficient in isolation to establish willfulness does not mean that
8 those allegations are now stricken from the complaint for all time. The totality of
9 Entropic’s allegations is more than sufficient to plead Comcast’s willful
10 infringement.

11 In any event, the SAC’s new allegations about Comcast’s investment in
12 Entropic Inc. and Comcast’s involvement in MoCA are independently sufficient to
13 establish Comcast’s willful infringement of the Asserted Patents. Comcast argues
14 that these allegations establish only that Comcast would have been aware of a “patent
15 portfolio” or “patent applications,” but not the Asserted Patents themselves. 1043
16 DE 598 at 21:13–23:7. To the contrary, the SAC alleges that Comcast was an “early
17 and active member of MoCA” who “helped to develop the MoCA standard.” SAC
18 ¶ 126. Comcast would thus have **needed** to be aware of the patented technology that
19 is essential to practicing the MoCA standard. Cf. *Microsoft Corp. v. Motorola, Inc.*,
20 864 F. Supp. 2d 1023, 1027 (W.D. Wash. 2012) (explaining the need for members
21 of standards setting organizations to identify patents that are essential to the proposed
22 standard). The SAC then identifies six specific patents that were filed during the time
23 that Comcast helped develop the MoCA standard. SAC ¶ 128. The SAC specifies
24 that these patents are standards essential. *Id.* Based on Comcast’s involvement in the
25 development of the MoCA standard, it is therefore more likely than not that Comcast
26 was aware of these patents and tracked them through issuance. *See generally WCM*
27 *Industries, Inc. v. IPS Corp.*, 721 F. App’x 959, 970 (Fed. Cir. 2018) (rejecting a *per*

1 *se rule that “to willfully infringe a patent, the patent must exist and one must have*
2 *knowledge of it”); see also id. at 970 n.4 (casting doubt on its prior precedent that*
3 *“knowledge of a pending patent application cannot support a finding of willfulness,”*
4 *given that patent applications and prosecution activity are now published in real-*
5 *time).*

6 Comcast then takes issue with Entropic’s allegations regarding an email sent
7 by Anton Monk to the MoCA Board of Directors that specifically identifies Entropic
8 Inc.’s ownership of the ’518 Patent and states that the ’518 Patent is essential to the
9 practice of MoCA. SAC ¶¶ 133–36. Comcast argues that this allegation fails to
10 plausibly establish Comcast’s willful infringement because: (1) [REDACTED]
11 [REDACTED]; (2) [REDACTED]
12 [REDACTED]; (3) [REDACTED]
13 [REDACTED]; and (4) [REDACTED]
14 [REDACTED]. 1043 DE 598 at 35:14–36:11. None of these arguments are persuasive.

15 First, Entropic does not need to allege [REDACTED]
16 [REDACTED] in order to plausibly allege that Comcast was put on notice of its
17 infringement. Indeed, “[i]t is well established that corporations act through their
18 employees and an agent’s knowledge will generally be imputed to the corporate
19 principal so long as employees are acting within the scope of their employment.”
20 *Potter Voice Techs., LLC v. Apple Inc.*, 24 F. Supp. 3d 882, 886 (N.D. Cal. 2014);
21 *see also i4i Ltd. P’ship*, 598 F.3d at 860 (finding substantial evidence supporting a
22 finding of willful infringement where defendant company’s employees received
23 plaintiff’s sales kit citing the asserted patent and went to plaintiff’s software
24 demonstrations). Here, the SAC alleges that Monk’s email was sent to the MoCA
25 Board of Directors, and that “Comcast was a member of the Board at the time and
26 therefore ***received this notice from Entropic.***” SAC ¶¶ 134–35 (emphasis added).
27 This is sufficient to plausibly allege that the Comcast employees involved with

1 MoCA and the development of the infringing technology were put on notice of the
2 '518 Patent.

3 Second, Entropic's allegations are not insufficient simply because they do not
4 [REDACTED].

5 Monk's email put MoCA Board members on notice that any technology practicing
6 MoCA would infringe the '518 Patent. The SAC establishes that Comcast was
7 involved in the development of the standard, and during this same time, that Comcast
8 was in the process of developing its own technology essential to the practice of the
9 MoCA standard. *Id.* ¶¶ 125–38. Comcast subsequently practiced the MoCA standard
10 (and continues to do so). *Id.* ¶¶ 125–31. It is therefore highly plausible that Comcast
11 had knowledge that its use of MoCA infringed the '518 Patent. *Id.* ¶¶ 133–36.

12 Third, Comcast's argument that the email should be ignored simply because
13 [REDACTED] for this same reason—it put Comcast on notice of its
14 infringement at the time, and that knowledge persists. Moreover, the SAC alleges
15 that Comcast "continued to monitor and analyze Entropic's MoCA-related patents
16 and was aware of later-filed patents that are standard-essential to MoCA simply due
17 to the importance of MoCA to Comcast's business and Comcast's later involvement
18 as a board member of the MoCA." *Id.* ¶ 130.

19 At the very least, these allegations establish that Comcast was willfully blind
20 to its infringement of the '518 Patent and the '759 Patent, which is a continuation of
21 the '518 Patent. *See Corephotonics, Ltd.*, 2018 WL 4772340, at *9 (N.D. Cal. Oct.
22 1, 2018) (allegations created inference that defendant "was at least willfully blind to
23 a high risk that it was infringing [plaintiff's] patents" where defendant purposefully
24 neglected to investigate plaintiff's patents to avoid confirming that it was infringing
25 the asserted patents). Thus, Entropic's allegations regarding Comcast's involvement
26 in MoCA are sufficient to establish Comcast has willfully infringed the Asserted
27 Patents.

1 **IV. CONCLUSION**

2 Based on the foregoing, Entropic requests the Court deny this motion in its
3 entirety. If, however, the Court finds that dismissal under Rule 12(b)(1) is
4 appropriate, that dismissal must be without prejudice. *See supra* at 10 (citing *Harris*,
5 847 F.3d at 656). If the Court finds, under Rule 12(b)(6), that dismissal-in-part of
6 Entropic's willfulness allegations is appropriate, Entropic respectfully requests leave
7 to amend to further refine its allegations of Comcast's willful infringement.

8
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Entropic Communications, LLC, certifies that this brief contains 5,851 words, which complies with the word limit of L.R. 11-6.1.

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